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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,547	03/16/2000	Jose Fedida	JEL-31040	1825

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EXAMINER

BUI, VY Q

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/526,547

Applicant(s)

FEDIDA, JOSE

Examiner

Vy Q. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 18-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 19, 21-30 and 32-40 is/are rejected.
- 7) ☒ Claim(s) 20 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature as recited in lines 12-15, claim 40 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The support for this feature in the specification is also required.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29 (line19) and 40 (line 17) recite the limitation "said clearance". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1. Claims 18-19, 22, 26-27, 29-30, 33, and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GOICOECHEA et al (5,609,627).

As to claims 18-19, 22, 26-27, 29-30, 33, and 37-38, GOICOECHEA (Figs. 1-7) discloses a prosthesis with graft/impervious envelope 62 and stent 52 (Fig. 5) to be implanted in a human passage as shown, for example, in Fig. 4A formed by zigzag-shaped nitinol wire/filament (column 8, lines 64-67) to define approximately annular units linked together by links/loops 99c/rings 99d/staples 99e of nitinol wire (column 9, lines 58-61). Notice that a staple connection is well known to include one single/sole straight central portion connecting two loops at both ends of the central portion. Since the flexibility of a prosthesis device such as a stent or stent-graft is required to facilitate the deployment of the device, especially along curved lumen in a human or animal passage, the links/loops 99c/rings 99d/staples 99e of nitinol wire as taught by GOICOECHEA should be partially or entirely closed loops to entrap the zigzag-shaped wire with some clearance. Notice that partially closed or entirely closed loops of staples 99e would both function well for the GOICOECHEA device as long as the loops of the staples entrap the zigzag-shaped wire with some clearance. Alternatively, it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to make the staples 99e to entrap the zigzag-shaped wire by partially closed or entirely closed loops of staples 99e with some clearance as recited in the claims, as these configurations would provide linking means allowing a flexibility of the GOICOECHEA device for easy deployment in a tortuous passage.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 23, 34 and 28, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over GOICOECHEA et al (5,609,627).

As to claims 23, 34 and 28, 39, GOICOECHEA reference discloses the claimed invention except for hexagonal opening mesh and a turned-back region at least at one of the ends of the stent. Hexagonal opening mesh is well known in stent art, and a stent-graft having a graft with a turned-back section at the end(s) of the stent-graft to form a tight seal between the graft and an inner vessel wall is well known in the art. It would have been obvious to one of ordinary skill in the art to modify GOICOECHEA

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stent-graft to have the features as claimed to provide a seal between the stent-graft and the inner wall of a vessel.

2. Claims 21, 24-25, 32, and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over GOICOECHEA et al (5,609,627) as applied to claims 18 and 29 above, and further in view of LAU et al (5,873,906).

As to claims 21 and 32, GOICOECHEA reference discloses the claimed invention except for the links/staples 99e with loops in two different planes. However, LAU (Fig. 2 or 9; column 14, lines 38-42) discloses links having loops in different planes to secure two adjacent annular units of a stent. It would have been obvious to one of ordinary skill in the art to make GOICOECHEA links/staples 99e with loops in different planes as recited in the claims, for this configuration would be another good way to secure two adjacent annular units of GOICOECHEA stent.

As to claims 24-25 and 35-36, GOICOECHEA reference discloses the claimed invention except for the links/staples 99e are made of a radiopaque material such as gold, platinum, tantalum. However, LAU (Fig. 2 or 9; column 14, lines 38-42) discloses links made of a radio opaque material such as gold, platinum, tantalum to connect two adjacent annular units of zigzag-shaped wire. It would have been obvious to one of ordinary skill in the art to make links/staples 99e of a radiopaque material such as tungsten or platinum or tantalum or tungsten in view of LAU for the radiopaque material such as tungsten or platinum or tantalum would be proper for linking two adjacent annular units together.

Allowable Subject Matter

Claims 20 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Applicant's Remarks

Applicant's amendment and Applicant's arguments filed on 11/18/2002 (paper #17) with respect to new claims 18-40 have been considered but are moot in view of the new ground(s) of rejection.

Please note that ground for rejection of canceled claim 7 was presented in previous "Final Office Action" on page 3, lines 8-9.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is (703) 306-1382.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano, can be reached at (703) 308-2496. The fax number for this Unit is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-0858.

VQB VB
February 7, 2003


MICHAEL J. MILANO
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